

**Department of Legislative Services**  
 Maryland General Assembly  
 2014 Session

**FISCAL AND POLICY NOTE**

House Bill 637 (Delegate Hubbard, *et al.*)  
 Health and Government Operations

**Maryland Medical Assistance Program - Rare and Expensive Case Management Program - Waiver Amendment**

This bill requires the Department of Health and Mental Hygiene (DHMH) to apply to the federal Centers for Medicare and Medicaid Services (CMS) for an amendment to the State’s Medicaid Rare and Expensive Case Management (REM) program.

The bill takes effect July 1, 2014.

**Fiscal Summary**

**State Effect:** Medicaid expenditures increase by an estimated \$86.5 million (50% general funds, 50% federal funds) annually beginning in FY 2016 to provide private-duty nursing services to specified individuals, assuming a one-year delay to obtain the amendment to allow expansion of coverage. Federal matching funds increase correspondingly. Application for the amendment can be handled using existing resources. Future years reflect enrollment growth and inflation.

(\$ in millions)	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
FF Revenue	\$0	\$43.3	\$45.5	\$47.8	\$50.3
GF Expenditure	\$0	\$43.3	\$45.5	\$47.8	\$50.3
FF Expenditure	\$0	\$43.3	\$45.5	\$47.8	\$50.3
Net Effect	\$0	(\$43.3)	(\$45.5)	(\$47.8)	(\$50.3)

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect*

**Local Effect:** None.

**Small Business Effect:** Meaningful. Small business providers of private-duty nursing services may serve additional Medicaid clients.

## Analysis

**Bill Summary:** The amendment must authorize enrollment in REM for adults ages 21 through 64 with a qualifying REM diagnosis who are ineligible for REM due to eligibility for Medicare (dually eligible) or Medicaid spend-down if (1) private-duty nursing services are medically necessary; (2) private-duty nursing services are necessary for the individual to transition from a nursing facility or intermediate care facility to the community, continue living safely in the community, or avoid institutional care; (3) the individual does not qualify for and is unable to receive the necessary nursing services under private insurance, Medicaid, or any other benefit, entitlement, or agency service; and (4) the annualized cost of the nursing services to be provided under REM does not exceed the annualized cost to Medicaid if the individual was placed in a nursing facility or intermediate care facility for which the individual qualifies for admission.

### **Current Law/Background:**

*REM Eligibility:* REM was created as part of the § 1115 waiver that established the HealthChoice managed care program. REM is an alternative acute care program for individuals who otherwise would be served in managed care organizations and provides case management services and subspecialty care for individuals eligible for HealthChoice who have certain rare and expensive conditions such as HIV/AIDS, cystic fibrosis, quadriplegia, muscular dystrophy, chronic renal failure, and spina bifida. These individuals have the option to receive services on a fee-for-service basis through REM.

Individuals who are dually eligible for both Medicaid and Medicare or who qualify for Medicaid spend-down do not qualify for HealthChoice and, therefore, are not eligible for REM. Individuals may be eligible for Medicaid spend-down if their income exceeds Medicaid eligibility limits but their medical expenses are equal to or greater than the portion of their income that exceeds eligibility limits. Individuals eligible under Medicaid spend-down are only eligible for a limited time and must pay some of their own medical bills.

*Medicaid Coverage of Private-duty Nursing:* Private-duty nursing is skilled nursing for individuals who require more individual and continuous care than is available under the home health program. Private-duty nursing is provided by a registered nurse or licensed practical nurse – typically in an individual’s home. There is no national standard for coverage of private-duty nursing under Medicaid. Coverage depends on the specific policies and funding of individual states.

In Maryland, Medicaid covers private-duty nursing under the Medicaid State Plan for children younger than age 21 who meet the standard of medical necessity for nursing services. Approximately 500 children receive this service. Private-duty nursing is not a

covered benefit under the Medicaid State Plan for adults. Medicaid provides private-duty nursing to adults in REM who meet the standard of medical necessity for nursing services. Approximately 140 adults in REM receive this benefit. In 2011, CMS granted Maryland permission to amend the § 1115 HealthChoice demonstration to allow adults in REM to continue receiving REM services once they become eligible for Medicare (and become dually eligible) even though as dually eligible individuals they no longer qualify for REM.

The Medicaid Model Waiver (which serves up to 200 individuals who otherwise would be hospitalized) provides private-duty nursing if clinically justified and if the cost of services in the community is less than the cost of a comparable institution. This waiver provides private-duty nursing to 110 individuals, including 13 adults who entered the waiver prior to age 22 and retained private-duty nursing services as they became adults because the cost neutrality test is still met.

**State Fiscal Effect:** Medicaid expenditures increase by an estimated \$86.5 million in fiscal 2016, which reflects a one-year start-up delay. This estimate reflects the cost to provide private-duty nursing services to dually eligible and spend-down Medicaid enrollees with REM diagnoses who meet the criteria specified by the bill. The information and assumptions used in calculating the estimate are stated below:

- DHMH applies to CMS for an amendment to the § 1115 HealthChoice Demonstration and CMS grants the amendment.
- The amendment process takes one year; thus, provision of private-duty nursing services to newly eligible individuals does not begin until July 1, 2015.
- The number of dually eligible individuals and spend-down enrollees in Medicaid who are ages 21 to 64 and have a qualifying REM diagnosis represents 55,726 member months (the number of months any individuals meeting these criteria are enrolled in Medicaid annually).
- Of the adults currently enrolled in REM, 16% utilize private-duty nursing services.
- These enrollees receive an average of 77 hours of private-duty nursing services per week at a cost of \$10,549 per month or \$126,589 per year.
- Dually eligible and spend-down individuals eligible for private-duty nursing under the bill utilize private-duty nursing services at the same rate as other adults currently receiving such services in REM (16%).
- Medicaid covers an additional 8,916 member months of private-duty nursing services at a cost of \$10,549 per month.
- The total cost for *new* services is \$94.1 million annually.
- Medicaid realizes some savings for individuals currently residing in nursing facilities who are able to move into the community under the bill.

- The number of dually eligible individuals with REM diagnoses residing in nursing facilities represents 7,863 member months.
- If private-duty nursing services are utilized by these individuals at a rate of 16%, Medicaid realizes savings for nursing facility expenses (an average of \$6,006 per month) for 1,258 member months annually.
- Total savings for these individuals (private-duty nursing expenses minus nursing facility expenses) are approximately \$7.6 million annually.
- Total expenditures, net these savings, are \$86.5 million annually.
- Medicaid expenditures for dually eligible and spend-down populations are funded with 50% general funds, 50% federal funds.

Future years reflect 3.3% inflation in the cost of private-duty nursing services and 1.8% annual enrollment growth.

**Additional Comments:** The bill specifies that the annualized cost of the nursing services to be provided under the bill cannot exceed the annualized cost to Medicaid if the individual was placed in a nursing facility or intermediate care facility for which the individual qualifies for admission. According to DHMH, it is unclear how these caps could be applied. The average annual cost to Medicaid for a nursing facility is \$72,076, while an intermediate care facility is \$205,000. The annual cost of an intermediate care facility exceeds the average cost of private-duty nursing under REM (\$126,589). A cap on private-duty nursing services of \$72,076 would cap services at approximately 43 hours per week, much less than the current average of 77 hours per week. DHMH indicates that it would not limit services to meet this cap as such a limit would likely be viewed as discriminatory if not applied broadly across the REM program. CMS is unlikely to approve a cap on services for only one specific category of adults in the program.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 537 (Senator Klausmeier) - Finance.

**Information Source(s):** Department of Health and Mental Hygiene, Department of Legislative Services

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